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71-1065

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

RESPONSE NOT PRINTED

No. .....

LOUIE L. WAINWRIGHT, Director,
Division of Corrections, State of Florida,

Petitioner,

against

EUGENE V. ROSS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROBERT L. SHEVIN
Attorney General of the
State of Florida
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of Counsel

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Louie L. Wainwright, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the case of *Eugene V. Ross v. Louie L. Wainwright* (judgment entered on November 22, 1971).

CITATIONS TO THE OPINIONS BELOW

The District Court opinion is unreported. It is reproduced as Appendix "A" to this petition. The opinion of the Court of Appeals for the Fifth Circuit is as yet unreported. It is reproduced as Appendix "B" to this petition. The opinion of the Florida First District Court of Appeal affirming the order of the trial judge denying respondent's motion to vacate the judgment and sentence is reported at 224 So.2d 779. The opinion and order of the state court trial judge denying respondent's motion to vacate judgment and sentence is unreported. It is reproduced as Appendix "C" to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1971.

The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

QUESTION PRESENTED

THE COURT OF APPEALS, FIFTH CIRCUIT, FAILED TO GIVE EFFECT TO THE STATE COURT FINDING OF FACT AS REQUIRED BY 28 U.S.C. § 2254(d) AND SAID RULING IS IN CONFLICT WITH THE DECISION OF THIS COURT IN *Boykin v. Alabama*, 395 U.S. 238 (1969).

STATEMENT OF THE CASE

On August 25, 1967, respondent and three others were indicted by the Duval County Grand Jury for the crime of rape. On January 8, 1968, respondent appeared in court and through his counsel of record moved the court for leave to withdraw his previously entered plea of not guilty and to enter a plea of guilty to the crime of rape as alleged in the indictment. This motion was granted by the court upon a finding that said plea of guilty would be freely and voluntarily entered and made without any undue influence, force, duress or promise, and that respondent understood the nature and consequences of his plea of guilty. The crucial colloquy occurring at the time respondent entered his plea of guilty is set out in the margin of the opinion handed down by the Fifth Circuit. See Appendix B. Thereafter on May 3, 1968, respondent was adjudged guilty of the offense of rape and sentenced to imprisonment for the full term of his natural life.

Respondent filed a motion to vacate judgment and sentence in the state trial court on or about September 20, 1968. This motion was denied by order of court dated November 6, 1968. See Appendix C. Respondent appealed the order denying his motion to vacate judgment and sentence. The Florida First District Court of Appeal affirmed the order of the trial court after examining the case on its

merits and determining that the plea of guilty was freely and voluntarily given. See 224 So.2d 779.

On January 8, 1971, respondent filed his petition for writ of habeas corpus in the United States District Court, Middle District of Florida, Jacksonville Division, and that court on the same date issued its order to show cause. Respondent filed his response to the order to show cause on January 20, 1971. The Federal District Court, on February 15, 1971, entered its order discharging the previously entered order to show cause, dismissing the case, and denying a request for certificate of probable cause should one be requested. See Appendix A.

Respondent took an appeal from the order entered by the Federal District Court to the United States Court of Appeals, Fifth Circuit. Briefs were filed and on November 22, 1971, the Fifth Circuit handed down its decision vacating the judgment of the District Court which denied habeas corpus relief and remanded the cause to that court with directions. See Appendix B.

Reasons for Granting the Writ

1. The instant case conflicts with the prior decision of this Court in Boykin v. Alabama, 395 U.S. 238 (1969).

Boykin v. Alabama, supra, must stand for the proposition that when the waiver of constitutional rights involved in entering a plea of guilty is spread upon the record, there would be no longer any need of "spin-off of collateral proceedings that seek to probe murky memories." The decision of the court below flies in the teeth of this principle. The hearing required by that court is to "merely confirm that it was unnecessary." The precedent set by the Fifth Circuit simply means that Florida and other states within the jurisdiction of that court will have to engage in evidentiary hearings merely to confirm that they are unnecessary. If federal district courts are to be required to engage in evidentiary hearings merely to determine that they are unnecessary where the record affirmatively shows that a plea of guilty was voluntarily and understandingly entered, then the very purpose of *Boykin* has been thwarted.

In its opinion, the Fifth Circuit stated:

> "We now direct a hearing only because a material fact was not adequately developed in the state court proceeding;"

The opinion then goes on to point out that plea-bargaining generated the change in pleas, and respondent advised the trial court that his plea was conditional and had been changed as the result of a promise. The Fifth Circuit then went on to state:

> "The only further explanation of that promise that *Ross himself* gave came by means of his 'No, sir' response to the judge's suggestive question: 'No one has promised what you'd get definitely, have they?'"

It is apparent that the Fifth Circuit was under the impression that the above quoted "suggestive question" was propounded by the trial judge and as a result thereof the petitioner was lured into a plea of guilty. But this is not the case. The trial judge did not ask the question. The question was asked by respondent's attorney as the colloquy set forth in the margin of the lower court's opinion will show.

It seems apparent that the lower court was influenced by the independent assertions later made by respondent. But the whole purpose of requiring a complete waiver to be spread upon the record is to refute just such attacks as this upon a voluntary and intelligent plea of guilty previously entered. It takes but little imagination to appreciate that independent assertions can always be conjured up in an effort to invalidate a previously entered plea of guilty. But when such belated attacks are specifically refuted by the record and the plea of guilty is affirmatively shown to have been freely, voluntarily, and intelligently entered, then no evidentiary hearing should be required for the purpose of proving the truthfulness of what is already shown

on the record. To do so directly contradicts the principle for which *Boykin* stands.

2. THE INSTANT CASE RAISES A SERIOUS QUESTION AS TO THE EFFECT GIVEN TO STATE COURT FINDINGS OF FACT REQUIRED BY 28 U.S.C. § 2254(d) BY FEDERAL COURTS.

28 U.S.C. § 2254(d) provides in pertinent part as follows:

> "In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct,...."

The Fifth Circuit bottomed its decision squarely upon one of the exceptions to § 2254(d) in pointing out that a hearing was required because a material fact was not adequately developed in the state court proceeding; "otherwise, the federal habeas forum would be bound by the implicit finding of fact by the state habeas courts that Ross's plea was voluntary."

Query: Just how *adequately* must a material fact be developed in order to meet the approval of the lower court? The Fifth Circuit recognized that

> "Three Florida courts have reviewed Ross's case in the light of the same contentions he raises here and have been satisfied his plea was voluntary."

The state-court trial judge was obviously of the opinion that respondent's plea of guilty was freely, voluntarily, and understandingly made before he accepted it. The state-court trial judge was still of the same opinion that respondent's plea was voluntarily and intelligently made at the time he entered his order on November 6, 1968 denying respondent's motion to vacate judgment and sentence. See Appendix C. On direct appeal to the Florida First District Court of Appeal, that court was also of the opinion that respondent's plea of guilty was voluntarily and intelligently made and, thus, affirmed the order of the trial judge. See 224 So.2d 779. As pointed out in the opinion of the lower court, respondent's petition for writ of habeas corpus was denied by the Supreme Court of Florida. The Federal District Court was also of the opinion that respondent's plea of guilty was voluntarily and intelligently entered and so stated in its order:

> "Even the statement by the prosecution that it would request a life, rather than a death, sentence on entry of the plea was recognized by petitioner not to be a definite promise."

See Appendix A.

It is submitted that all of the material facts were adequately developed; at least every court before which respondent appeared, with the exception of the Fifth Circuit, was of this opinion. The determination of this factual issue by the state courts and by a federal district court should be binding on the Fifth Circuit.

Somewhere along the line in the adequate development of material facts, a saturation point must be reached. The material facts were adequately developed in this case, and the lower court's refusal to recognize the applicability of § 2254(d) and the mandate of this court in *Townsend v. Sain*, 372 U.S. 293 (1963), is error.

Because of the importance of the question presented and because of the conflict between the decision of the court below and the decision of this Court in *Boykin v. Alabama*, *supra*, it is respectfully submitted that this Court should take jurisdiction.

CONCLUSION

FOR THE FOREGOING REASONS, THE INSTANT PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Dated: February 15, 1972

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General of the
State of Florida
Attorney for Petitioner

WALLACE E. ALLBRITTON
Assistant Attorney General
of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari has been forwarded via U. S. Mail to Mr. Eugene V. Ross, Florida State Prison, P. O. Box 221, Raiford, Florida 32083, respondent, this day of February 1972.

WALLACE E. ALLBRITTON
Assistant Attorney General

Of Counsel

APPENDIX "A"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

EUGENE V. ROSS,

Petitioner,

v. No. 71-12-Civ-J

LOUIE L. WAINWRIGHT, Director,
Division of Corrections,
State of Florida,

Respondent.

O R D E R

Pursuant to this Court's order to show cause, respondent has submitted to this Court a transcript of the entry of the guilty plea to the charge of rape on January 8, 1968. The transcript reveals lengthy and careful inquiry as to voluntariness by defendant's attorney and that the plea was fully voluntary. Even the statement by the prosecution that it would request a life, rather than a death, sentence on entry of the plea was recognized by petitioner not to be a definite promise. It, therefore, appears that the plea was not involuntary nor coerced by a promise of a lighter sentence.

It is, accordingly,

ORDERED:

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1. The order to show cause issued by this Court January 8, 1971, is discharged, and the case is dismissed.

2. If an appeal is taken and a certificate of probable cause is requested, the request is denied.

DONE AND ENTERED at Jacksonville, Florida, this 15th day of February, 1971.

William A. McRae, Jr.
Judge

Copies mailed to:

MR. EUGENE V. ROSS, No. 021128, P. O. Box 221, Raiford, Florida, 32083

HONORABLE ROBERT L. SHEVIN, Attorney General, State of Florida, Capitol Building, Tallahassee, Florida, 32304

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

DOCKETED
11-24-71
FLORIDA ATTORNEY GENERAL

No. 71-1937
Summary Calendar*

EUGENE V. ROSS,
Petitioner-Appellant,

versus

LOUIE L. WAINWRIGHT, Director,
Division of Corrections, State of Florida,
Respondent-Appellee.

Appeal from the United States District Court for the Middle District of Florida

(November 22, 1971)

Before THORNBERRY, MORGAN and CLARK, Circuit Judges.

CLARK, Circuit Judge: Eugene V. Ross was seventeen years old when he was charged with rape by the State of Florida. He initially entered a plea of not-guilty

*Rule 18, 5th Cir.; *see Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y., et al.*, 431 F.2d 409, Part I (5th Cir. 1970).

APPENDIX "B"

but upon advice of his court-appointed counsel, he changed his plea in open court to guilty. Upon conviction on this plea, he was sentenced to life imprisonment. The crucial colloquy that occurred at the time of repleading among Ross, his counsel, the prosecutor and the trial court judge is set out in the margin.[1]

---

[1]BY COUNSEL FOR ROSS:

Q You are Eugene Ross?

A Right.

Q And I am your attorney?

A Right.

Q And on several occasions we have talked over the matters of this lawsuit while you were in the Duval County Jail?

A Yes, sir.

Q And you have previously entered a plea of not guilty?

A Yes, sir.

Q Do you withdraw that plea of not guilty?

A Yes, sir.

Q Do you wish to enter a plea of guilty?

A Yes, sir.

Q Do you know what the effect of a guilty plea is? It means that you are admitting the truth of the charges?

A Yes.

Q I have told you about any possible defenses that we may have to this crime of rape, haven't I?

A Yes, sir.

Q And I told you that I didn't think we had any defense, didn't I?

A Yes, sir.

Q Further, I have told you that there are some other offense of which you may be found guilty, possibly an assault, but I told you that I did not think that the jury or the judge would bring back a verdict on the assault charge?

A Yes, sir.

Q I told you that the possible punishment that you can receive is a death penalty, and you understand that?

A Yes.

Q Further, I told you that you have a right to jury trial, trial by twelve jurors to hear your lawsuit, or the Judge can hear it, do you understand that?

A Yes.

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Q By pleading guilty, you are admitting the truth of the charges as to each allegation of the indictment charging you with rape, do you understand?

A Yes.

Q Tell the Court in your own words, do you want to enter a plea of guilty or not guilty?

A Plea of guilty.

BY THE COURT:

Q Have you been promised anything? Have you been promised any reduction in the penalty that could be imposed upon you?

A Yes, sir.

DISTRICT ATTORNEY: The State has stated openly that in the event that this defendant pleaded guilty that the State of Florida would move the Court to not send him to the electric chair but to give him life or some lesser punishment.

COUNSEL FOR ROSS: I don't think the man has been promised anything.

Q No one has promised you what you'd get definitely, have they?

A No, sir.

BY THE COURT:

Q No one has threatened you?

A No, sir.

Q To make you plead guilty to this charge?

A No, sir.

THE COURT: All right.

DISTRICT ATTORNEY: The State will accept the plea — and you withdraw the plea of not guilty and enter the plea of guilty?

DEFENDANT ROSS: Yes.

DISTRICT ATTORNEY: The State now recommends to the Court that this defendant be sentenced to life imprisonment or such lesser term as in the Judgment of Your Honor seems proper under the circumstances. The State further recommends that he not be sentenced to the electric chair. I base that on my knowledge of this case in tote plus also the desires of the prosecuting witness and her mother which I submit to the Court is their view.

THE COURT: They are both opposed to anyone dying?

DISTRICT ATTORNEY: It is against their religion.

THE COURT: And they have so stated?

DISTRICT ATTORNEY: They have so stated under oath.

THE COURT: Does the State and the defendant wish that we impose sentence at this time or at a later date?

APPENDIX "B"

4 EUGENE ROSS v. L. L. WAINWRIGHT

Ross took no appeal from his conviction and sentence, but within four months thereafter filed a motion to vacate and set aside the proceedings, pursuant to Fla. Cr. Pr. Rule 1.850. This motion was denied without an evidentiary hearing. The denial was affirmed on appeal. Ross's petition for a writ of habeas corpus was denied by the Supreme Court of Florida. Having exhausted his state remedies, Ross then applied for federal habeas corpus relief in the district court below. Relief was denied there also and again, without an evidentiary hearing. Ross asserts that before he changed his plea his counsel told him that the prosecutor promised he would receive a sentence of ten years or less if he would plead guilty; that counsel told Ross that Ross's father wanted him to plead guilty, but that this was untrue; and that after receiving his life sentence Ross asked counsel what happened, to which his counsel replied, "Don't worry [I will have you] back in court in a couple of weeks and straighten out the sentence." Ross contends that this misleading advice rendered his plea unintelligent and involuntary, and his conviction and sentence void. Finding that Ross's contentions are such that they cannot be denied summarily, we vacate the judgment denying habeas relief and remand for a hearing.

COUNSEL FOR ROSS: I would ask that a delay be obtained for this reason, Your Honor, I would appreciate the opportunity of bringing whatever witnesses, his father in here perhaps, to say something before you impose sentence.
THE COURT: I will defer sentencing at this time.
I will adjudge that he is guilty, having pled guilty to the crime of rape, that he is guilty of rape, but I will impose a sentence at a future date.

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Principles laid down by the Supreme Court and this circuit guide us in our decision. Though decided under a different statute, the reasoning of each is completely apropos to the issues before us. In *Machibroda v. United States*, 368 U.S. 487, 82 S.Ct. 510, ____ L. Ed. ____ (1962), the Court, in considering the validity of a guilty plea conviction under 28 U.S.C.A. § 2255, stated: "There can be no doubt that, if the allegations contained in the petitioner's motion and affidavit are true, he is entitled to have his sentence vacated. A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void." Also controlling in the present case is this circuit's test, again announced in a § 2255 proceeding, for deciding when a guilty plea has been so unfairly induced as to render it involuntary: "The legal principles in this instance are fairly clear — a plea cannot be vacated because the defendant anticipated that by pleading guilty he would get a lighter sentence. On the other hand the Government ought not be allowed to lure the defendant into a plea on false information." *United States v. Battle*, ____ F. 2d ____ (5th Cir. 1971) [No. 71-1344, August 13, 1971]. Mindful of these precepts, we turn to the record before us.

The record excerpt set out in footnote 1, discloses that Ross's counsel made diligent inquiry to demonstrate that Ross understood the general nature and the consequences of a plea of guilty and, specifically, knew that he could receive the death penalty on his new plea. The judge then began an inquiry into Ross's intentions. When Ross said he had been promised a reduction in the possible penalty for his plea, the prosecutor

immediately advised the court that he had previously agreed that if Ross's plea was changed the State would move the court not to send Ross to the electric chair, but to give him life or some lesser penalty and, as the record shows, the prosecutor did in fact make such a motion. Three Florida courts have reviewed Ross's case in the light of the same contentions he raises here and have been satisfied his plea was voluntary. None of these state forums considered any additional hearing was required. These judgments may ultimately prove to be correct. It could well be that the hearing we require will merely confirm that it was unnecessary. Ross's situation comes very close to preenting a case in which the trial court record was so well-developed and so conclusive as to exclude the possibility of petitioner proving his contentions, thus obviating the need for a hearing.[2] For, while the Great Writ stands as a guarantee to every citizen that he will not be detained in violation of fundamental liberties, it does not permit a federal court to retry state criminal proceedings. We now direct a hearing only because a material fact was not adequately developed in the state court proceeding; otherwise, the federal habeas forum would be bound by the implicit finding of fact by the state habeas courts that Ross's plea was voluntary. 28 U.S.C.A. § 2254 (d); *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

The trial court record we have before us shows on its face that plea bargaining generated the change in

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[2]*See e.g.*, Hunter v. United States, ____ F.2d ____ (5*th* Cir. 1971) [No. 31075, September 13, 1971]; Streator v. United States, 395 F.2d 661 (5*th* Cir. 1968).

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pleas. Ross succinctly advised the court that his new plea was conditional and had been changed as the result of a promise. The only further explanation of that promise that *Ross himself* gave came by means of his single "No, sir" response to the judge's suggestive question: "No one has promised you what you'd get definitely, have they?" Ross's sworn allegations of fact, supplemental to and explanatory of what is shown in the trial record are sufficient to demonstrate that an evidentiary hearing should have been conducted in the court below to determine one material fact — the nature and substance of the representations made to Ross in exchange for his agreement to confess guilt in open court.

The efforts of the trial judge and Ross's counsel to determine that Ross's change of plea was voluntary appear to have been exerted in the utmost good faith. At the same time, Ross's present contentions appear highly implausible. However, these contentions are not so utterly inconsistent with the record that we are willing to risk the remainder of a seventeen-year-old's life on the supposition that they cannot be established. *See Weed v. United States*, 342 F.2d 971 (5*th* Cir. 1965). We again advert to language used by the Supreme Court in *Machibroda*,[3] *supra:* "the specific and detailed factual assertions of the petitioner, while improbable, cannot at this juncture be said to be incredible. If the allegations are true, the petitioner is clearly entitled to relief." The judgment of the district court denying habeas corpus relief is vacated and the cause is re-

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[3]368 U.S. at 496.

APPENDIX "B"

manded to that court with directions to conduct an evidentiary hearing which will afford petitioner an opportunity to prove the allegations of his petition.

VACATED and REMANDED, with directions.

APPENDIX "C"

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DUVAL COUNTY.

CASE NO. 9854-C DIVISION D

THE STATE OF FLORIDA,

-vs-

EDWARD "SAM" KINSON, EUGENE VINCENT ROSS, RONALD LOUIE WALKER and LEON ALLEN ROUNDTREE, JR.

ORDER DENYING MOTION OF THE DEFENDANT, EUGENE VINCENT ROSS, TO VACATE, SET ASIDE OR CORRECT JUDGMENT AND SENTENCE.

This cause again coming on to be considered upon the motion filed herein by the defendant, Eugene Vincent Ross, pursuant to Rule 1.850, Florida Rules of Criminal Procedure, on September 20, 1968, to vacate, set aside or correct the judgment and sentence imposed upon said defendant in this cause, and the Court having considered the grounds and allegations of said motion, and it appearing to the Court and the Court finding from the record herein that Honorable Lamar Winegeart, Judge of the Juvenile Court of Duval County, Florida, on June 15, 1967, entered an order in the cause therein pending entitled "In the Interest of Eugene Vincent Ross" waiving any and all jurisdiction which said Juvenile Court had of the person of the said Eugene Vincent Ross, who was then sixteen years of age, and ..

APPENDIX "C"

certifying his case to the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, wherein the said Eugene Vincent Ross was charged with the offense of Rape, alleged to have been committed upon one Elizabeth L. Brewer in Duval County, Florida, on February 11, 1967; that thereafter on August 25, 1967, the Grand Jury of Duval County, Florida, returned and presented to this Court an indictment charging the said Eugene Vincent Ross, and one Edward "Sam" Kinson, one Ronald Louis Walker and one Leon Allen Roundtree, Jr. with the offense of Rape alleged to have been committed upon the said Elizabeth L. Brewer in Duval County, Florida, on February 11, 1967; that on September 12, 1967, in Open Court, the said Eugene Vincent Ross was adjudged insolvent by the undersigned Judge, and Honorable T. Edward Austin, Jr., Public Defender of the Fourth Judicial Circuit of Florida, was appointed by the Court to represent the said Eugene Vincent Ross throughout the trial of this cause and, also, on said September 12, 1967, the Court adjudged each of said co-defendants, Edward "Sam" Kinson, Richard Louis Walker and Leon Allen Roundtree, Jr. insolvent and appointed the said Honorable T. Edward Austin, Jr., Public Defender of the Fourth Judicial Circuit of Florida, to represent each of said co-defendants throughout the trial of this cause, and the Court continued said cause to September 29, 1967, for the arraignment of said four defendants upon the indictment charging said defendants with the offense of Rape, as aforesaid; that thereafter on September 29, 1967, in Open Court,

APPENDIX "C"

the Court granted the motion of the said Honorable T. Edward Austin, Jr., Public Defender of the Fourth Judicial Circuit of Florida, to withdraw as counsel of record for the said Eugene Vincent Ross and his three co-defendants named in the indictment in this cause, and proceeded to appoint Walter R. Stedeford, Esquire, a practicing attorney at the Bar of this Court, to represent the defendant, Eugene Vincent Ross, throughout the trial of this cause and the Court, also, at said time appointed Donald G. Nichols, Esquire, a practicing attorney at the Bar of this Court, to represent the defendant, Edward "Sam" Kinson, and Richard L. Brown, Esquire, a practicing attorney at the Bar of this Court, to represent the defendant, Ronald Louis Walker, and Samuel S. Jacobson, Esquire, a practicing attorney at the Bar of this Court, to represent the defendant, Leon Allen Roundtree, Jr., all appointments being to represent said defendants throughout the trial of this cause, and that all four defendants were personally present in Court on said September 29, 1967, when the Court granted the motion of Honorable T. Edward Austin, Jr., Public Defender of the Fourth Judicial Circuit of Florida, to withdraw as counsel for said four defendants and appointed the above named four attorneys to represent said four defendants; that thereafter on October 13, 1967, in Open Court, in the presence of said four defendants and their counsel of record, the Court re-set the arraignment of said four defendants upon the indictment herein for October 21, 1967, and ordered the Clerk of this Court to notify the parents of said defendants that said arraignment

of said defendants would be held in this Court on said October 21, 1967, and that pursuant to said order of Court, the Father of the said Eugene Vincent Ross, to-wit: Amos Ross, was notified of said date of said arraignment; that on October 21, 1967, in Open Court, the said Eugene Vincent Ross and his three co-defendants were duly arraigned upon the indictment herein and each defendant thereupon entered his plea of not guilty to said indictment charging each of said defendants with the offense of Rape, at which arraignment of each defendant was personally represented by his counsel of record; that thereafter on December 27, 1967, the Father of the said Eugene Vincent Ross, to-wit: Amos Ross, was notified by the Clerk of this Court that the trial of this case against the said Eugene Vincent Ross would be held in this Court on January 8, 1968; that on January 8, 1968, in Open Court, the defendant, Eugene Vincent Ross, by and through his counsel of record, the said Walter R. Stedeford, Esquire, moved the Court for leave to withdraw said defendant's plea of not guilty heretofore entered and to enter a plea of guilty to Rape, which motion was granted by the Court after the Court interrogated said defendant, Eugene Vincent Ross, and his attorney of record, concerning said plea of guilty, and upon a finding by the Court that said plea of guilty to the offense of Rape by the said Eugene Vincent Ross would be freely and voluntarily entered and made without any undue influence, force, duress or promise, and that the said Eugene Vincent Ross understood the nature and consequences of

APPENDIX "C"

said plea of guilty, and the said Eugene Vincent Ross thereupon entered his plea of guilty to Rape and the Court thereupon adjudged the said defendant, Eugene Vincent Ross, guilty of the offense of Rape and deferred the imposition of sentence to a later date; that thereafter on May 3, 1968, in Open Court, the Court again adjudged the said Eugene Vincent Ross guilty of the offense of Rape and sentenced said defendant to imprisonment for the full term of his natural life in the institution in the State Correctional System to which the Division of Corrections may cause said defendant to be conveyed or thereafter transferred, and informed said defendant of his right to appeal from said judgment and sentence, at the imposition of which said judgment and sentence the attorney of record for the said Eugene Vincent Ross, to-wit: Walter R. Stedeford, Esquire, was personally present in Court; and the Court now finding that no testimony or evidence prejudicial to the said Eugene Vincent Ross arising at or resulting from any preliminary proceedings held prior to the return of the indicement in this cause was brought to the attention of this Court or received in evidence against the said Eugene Vincent Ross before this Court, and the Court further finding that there is no basis in law or fact contained or set forth in the motion filed herein on September 20, 1968, by the said Eugene Vincent Ross to warrant the vacating, setting aside or correcting of the judgment and sentence imposed upon him by this Court in this cause, as aforesaid, and otherwise finding the grounds and allegations of said motion insufficient, it is upon consideration thereof

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ORDERED that the motion to vacate, set aside or correct the judgment and sentence filed herein on September 20, 1968, by the defendant, Eugene Vincent Ross, be, and the same is hereby, denied.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 6th day of November, A. D. 1968.

Marion W. Gooding
Circuit Judge

Copy to:

Mr. Eugene Vincent Ross
No. 021128
Cell No. E-4
P. O. Box 221
Raiford, Florida, 32083